

BEFORE THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION NO 1161 OF 1994.

Date of Decision:-27-11-1995.

For Approval and Signature

THE HON'BLE MR. JUSTICE N. N. MATHUR.

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judges ?

Mr. Trushar Mehta, Advocate, the petitioners.

Mr. Y.S. Lakhani, Advocate, for the respondent.

Coram:-N.N Mathur, J.

Date:--27-11-1995.

This Civil Revision Application has been filed under Sections 115 and 151 of the Code of Civil Procedure against the order dated 18-5-1994 passed by the learned Assistant Judge, Porbandar whereby the learned Judge upheld the order of the learned Civil Judge(J.D.), Porbandar below Exh.6 in Regular Civil Suit No.107 of 1991 on 31-1-1992.

The plaintiff-respondent (hereinafter referred to as the Plaintiff) filed a Civil Suit seeking declaration that the order of dismissal dated 1-5-1991 is illegal and void. He also filed an application Exh.6 praying for interim injunction. The learned Civil Judge(J.D.) issued a urgent show cause notice and posted the matter for hearing on 28-5-1991 and implementation of the order was stayed. After hearing the parties the Civil Judge(J.D.) had arrived at the conclusion that the findings of the Inquiry Officer are contrary to law and are based on no evidence. The Court also noticed that the Punishing Authority did not consider as to why extreme penalty of termination was required to be imposed on the plaintiff. On appeal, the learned Assistant Judge by a detailed order agreed with the findings of the Civil Judge(J.D.) and confirmed the order passed below exh.6.

Mr. Trushar Mehta, Learned Advocate appearing for the petitioner District Panchayat, Junagadh and others contended that the both the Courts committed material illegality in exercise of jurisdiction in arriving at conclusion that the finding of the enquiry officer is based on no evidence and as granting of injunction on order of termination. This Court keeping in view the principle that the ordinarily the injury which can be compensated in terms of money no injunction should be granted, directed the petitioner to produce the entire record of the inquiry in order to satisfy that the case is of no evidence. The material was produced before this Court. During the course of hearing it is revealed that the appeal filed against the order of termination pending before the appellate authority viz. District Development Officer, Junagadh and in view of this fact that this Court by order dated 7-10-1995 directed the District Development Officer, Junagadh to decide the appeal after hearing the parties by speaking order. This Course was adopted, considering that if contrary to view taken by both the Courts below that the case is of no evidence, if there is evidence constituting misconduct which call for extreme penalty of termination, the same will be reflected from the order of the appellate authority. Keeping in view Department and the plaintiff were given opportunity to put their case before the appellate authority. The petitioner was also directed to appear before the District Development Officer, Junagadh on 13-10-1995. Mr. Lakhani, Learned Advocate appearing for the respondent - plaintiff submits that his client had appeared before the District Development Officer, Junagadh on 13-10-1995 and he further produced the detailed statements accompanied by certain documents and

list of documents. The said appeal has been disposed of by the order dated 6-11-1995. English Translation of the said order is made available. I have gone through the order of the Appellate Authority. It will not be appropriate for this Court at this stage to make any comment with respect to the merits of the case. Suffice it to say that even the order of the Appellate Authority does not improve the case of the petitioner that the order of termination passed on the Inquiry Report is of no evidence.

It is next contended that the Civil Court has no jurisdiction to entertain and try the suit as the remedy of reinstatement and back wages is available under the Industrial Disputes Act and the same cannot be granted by the Civil Court. Reliance is placed on the decision in the case of Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylone Tea Co. and another, reported in AIR SUPREME COURT 255. Mr. Lakhani submits that the ratio laid down in Jitendra Nath's case (supra) has been explained recently by the Apex Court in the case of Rajasthan State Road Transport Corporation and Anr. Vs. Krishna Kant etc. reported in 1995(2) G.L.H. 116. The Court held that where the dispute involves the recognition, observance or enforcement of rights and obligations created by Industrial Disputes the only remedy is to approach the forum by the Industrial Disputes Act. Civil dispute arises by the general law of contract. The suit filed in the Civil Court cannot be said to be not maintainable even such dispute may also consist of the industrial dispute within the meaning of Section 2 (k) or 2(a) of the Industrial Disputes Act. In view of the law laid down by the Apex Court in the aforesaid case, there is no substance in the contention raised by the petitioner. Considering the facts of the case, I am not inclined to interfere with the orders of the Courts below and is not considered to be a fit case to exercise power under Section 115 of the Code of Civil. This Civil Revision Application is accordingly rejected.

It is made clear that the petitioner has been relieved in view of the order of this Court passed on 6-2-1995 which has been recalled today i.e. 27-11-1995 passed in Misc. Civil Application No.1005 of 1995. The position as on the date of this order i.e. 6-2-1995 shall prevail and the petitioner shall be reinstated as stated above within a period of three weeks from today.

Mr. Trushar Mehta, learned Advocate for the petitioners submits that the operation of this order may be stayed for four weeks. This request cannot be accepted

for the reasons that the respondent - plaintiff is continued in service on account of interim relief granted by the learned Civil Judge(J.D.), Porbandar in the year 1991 beyond 6-2-1995. He further submits that the Trial Court may be directed to expedite hearing of the main suit. This request appears to be reasonable and accordingly the learned Civil Judge(J.D.), Porbandar to decide the main Civil Suit No.107 of 1991 within a period of six months from today.

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